(716)

A.F.R.

HIGH COURT OF JUDICATURE AT BILASPUR : CHHATTISGARH
(Division Bench)

Coram: Hon'ble Shri S.R. Nayak, CJ
& Hon'ble Shri V.K. Shrivastava, J

WRIT PETITION No.2080 OF 2001

ORDER FOR CONSIDERATION

Sd/-
Chief Justice

HON'BLE SHRI V.K. SHRIVASTAVA, J.

Agree.

Sd/-
V.K. Shrivatava
Judge

POST FOR PRONOUNCEMENT
OF THE ORDER : 15 /12/2006.

Sd/-

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

(DIVISION BENCH)

CORAM : HON'BLE SHRI S.R. NAYAK, CJ
& HON'BLE SHRI V.K. SHRIVASTAVA, J.

WRIT PETITION NO.2080 of 2001

Petitioner: Ajit P.K. Jogi S/o Shri K.P. Jogi
Aged about 55 years,
R/o Civil Lines, Raipur
Chhattisgarh.

VERSUS

Respondents:

1. National Commission for Scheduled Castes & Scheduled Tribes through its Secretary 5th Floor, Lok Nayak Bhavan, Khan Marketing, New Delhi.
2. The Chairman
National Commission for Scheduled Castes & Scheduled Tribes through its Secretary 5th Floor, Lok Nayak Bhavan, Khan Marketing, New Delhi.
3. The State Govt. of Chhattisgarh
Through its Chief Secretary
D.K.S. Bhavan.
Raipur (Chhattisgarh)
4. The Principal Secretary/Secretary
SC. ST. OBC & Minorities Welfare
Deptt., Govt. of Chhattisgarh
Raipur (Chhattisgarh)
5. The Collector
Distt. Bilaspur
Bilaspur (Chhattisgarh)
6. Shri Sant Kumar Netam
Village Uslapur, P.O. Sikari
Distt. Bilaspur (Chhattisgarh).

Present:

Shri Vivek Tankha & Shri Manindra Shrivastava, Sr. Advocates with Shri Ashish Shrivastava and Shri Amrito Das learned counsel for the petitioner.

Shri Jog Singh learned standing counsel for respondents 1 and 2.

Shri Ravish Agrawal, learned Advocate General with Shri Sumesh Baraj, learned Govt. Advocate and Shri Ravi Shankar Prasad, learned Sr. Advocate with Smt. Suparna Shrivastava earned counsel for the State/respondents 3, 4 and 5.

Shri Rohit Arya learned Sr. Advocate with Shri K.K. Singh learned counsel for respondent No.6.

Shri H.N. Vyas and Shri Satyendra Sahu learned counsel for the interveners.

O R D E R
(Passed on 15 of December 2006)

The following order of the Court was passed by

S.R. Nayak, CJ: -

This writ petition preferred under Articles 226/227 of the Constitution of India is directed against the proceedings of the National Commission for Scheduled Castes and Scheduled Tribes, the first respondent herein registered in file No.2/FCS 2/2001-SSW-I and the "findings" contained in the report dated 16-10-2001. The petitioner has sought for quashing of the impugned proceedings by writ of certiorari and also prayed for a writ of mandamus to declare the findings contained in the report dated 16-10-2001 as void and inoperative. In addition, the petitioner has sought for a direction restraining the respondents from conducting any proceeding or taking any action pursuant to the complaint filed by the sixth respondent herein or the impugned findings of the first respondent-Commission.

(2) The facts of the case leading to filing of this writ petition may be noted in the first instance and they, as stated by the petitioner himself, in brief, are as follows:

The petitioner belongs to a Tribal Community known as 'Kawar/Kanwar' which is notified as Scheduled Tribe under the

Constitution Scheduled Tribe Order, 1950. The petitioner's forefathers were resident of a Tribal Hamlet called Jogi Dongari in village Sarbahara, Tahsil Pendra Road, District Bilaspur which is predominantly inhabited by Tribals. As far back as in the year 1967 a social status/caste certificate was issued in favour of the petitioner by the competent officer i.e. Naib Tahsildar, Pendra Road, Bilaspur certifying the petitioner as a member of Kanwar Scheduled tribe. Subsequently, similar certificates have also been issued to the petitioner, from time to time, by competent authorities. The petitioner was twice elected to Rajya Sabha and contested two Parliamentary elections from Raigarh and Shahdol Parliamentary constituencies. He was successfully elected from 'reserved' constituency of Raigarh. The petitioner successfully contested from Marwahi Vidhan Sabha Constituency in the year 1991 which is a constituency reserved for Scheduled Tribes. In the past, due to political motivation and out of vendetta, some disgruntled persons falsely and frivolously trying to raise question regarding the petitioner's social status, filed a writ petition in the form of Public Interest Litigation in the High Court of Madhya Pradesh at Bench Indore vide Misc. Petition No.1417 of 1988 which came to be decided by a Division Bench of that Court on 24-07-1989, dismissing the writ petition. Again, a writ petition being Writ Petition No.1039 of 2001 was filed in the High Court of Madhya Pradesh at Jabalpur and that writ petition was also dismissed by learned Single Bench of that Court vide order dated 24-07-2001 on merit with exemplary cost of Rupees Ten Thousand. Copies of both judgments are annexed to the writ petition as **Annexure-P/1** and **Annexure-P/2**, respectively.

(3) When the matter stood thus, the petitioner received a letter No.2/SCS-2/200-SSW-1 dated 29-08-2001 from the Joint Secretary of the first respondent-Commission, referring to an earlier letter dated 26-07-

2001 of the Chairman of the first respondent-Commission, proposing to investigate and enquire into the allegations made by the sixth respondent in his complaint made to the first respondent-Commission that the petitioner does not belong to Scheduled Tribe community but had contested the election to Vidhan Sabha from Tribal Constituency, Marwahi in the year 2001 and that the petitioner obtained a false Scheduled Tribe Certificate.

(4) The petitioner on receipt of the above letter dated 29.08.2001 vide his letter dated 11.09.2001 addressed to the Chairman of the first respondent-Commission refuted the allegations contained in the complaint of the sixth respondent and brought it to the notice to the first respondent-Commission the two orders of the High Court of Madhya Pradesh, referred to above and also drew attention of the Commission to their own regulation, i.e., paras 6.2 (d) and (e) contained in the Hand Book published by the Commission and contended that the first respondent-Commission has no jurisdiction or power to enquire into the allegations leveled by the sixth respondent with regard to the caste and social status of an individual like the petitioner and that such a power cannot be culled out from the provisions of Article 338 of the Constitution of India.

(5) The first respondent-Commission without deciding the jurisdictional issue raised by the petitioner proceeded to conduct the enquiry and investigation behind the back of the petitioner, and quite surprisingly the petitioner received a copy of the report of the first respondent-Commission dated 16.10.2001 in Case No.2/FCS/2001-SS-1 containing 'findings' of the Commission regarding the verification of the community certificate of the petitioner. Then, the petitioner also came to know that the first respondent-Commission sent its report to respondents

2 to 4 calling upon them to conduct verification of the genuineness of the Scheduled Tribe Certificate obtained by the petitioner and to initiate urgent necessary action for cancellation of his Scheduled Tribe Certificate and also to take criminal action against him as provided in the law and the rules and directed them to submit a report within thirty days with regard to the action taken. Under the circumstance, this writ petition was presented in this Court on 22.10.2001.

(6) This Court while entertaining the writ petition on 22.10.2001 stayed 'effect and operation of the findings contained in the impugned report dated 16.10.2001 until further orders' vide order dated 22.10.2001. The Court by the same order also directed the respondents not to take any action consequent to the impugned report dated 16-10-2001. Although subsequently the above interim order was sought to be vacated, the Court refused to vacate the interim order and consequently the interim order passed on 22-10-2001 has been in operation till now.

(7) M/s. Brij Mohan Agrawal, Ajay Chandrakar then Members of the Legislative Assembly and now Ministers and Shiv Ratan Sharma a Member of the Legislative Assembly jointly made I.A. No.5320 of 2001 on 27-11-2001 for permission to be impleaded as interveners in Writ Petition No.2080 of 2001. Thereafterwards, Shri Nankiram Kanwar then MLA and now Minister and Dr. Shukrajeet Nayak, MLA filed I.A. No.5527 of 2001 on 07-12-2001 for permission to be impleaded as interveners in Writ Petition No.2080 of 2001. I.A. No.5320 of 2001 and I.A. No.5527 of 2001 were listed before the Court on 31-07-2002 for orders. The Court having considered those interlocutory applications directed that the applicants/proposed interveners will be permitted to address the Court on any question of law, which may arise for determination in Writ Petition

No.2080 of 2001. When the matter stood thus, I.A. No.585 of 2002 was filed on 31-01-2002 for deleting the name of Dr. Shukrajeet Nayak, intervener No.5 from the array of interveners. That application, as prayed for, was allowed by this Court vide order dated 31-01-2002. M/s. Brij Mohan Agrawal, Ajay Chandrakar, Shiv Ratan Sharma and Nankiram Kanwar remained as interveners on record.

(8) On 22-11-2003 L.C. Bhadoo, J. having opined that what arises for consideration in the writ petition is interpretation of sub-clauses (a) and (b) of Clause (5) of Article 338 of the Constitution of India referred the writ petition to a Larger Bench. The relevant portion of the reference order dated 22-11-2003 reads as follows:

> "After hearing learned counsel for the parties, I am of the considered opinion that apart from other points, the main point arises for consideration and determination of this Court is interpretation of sub-clauses (a) & (b) of Clause 5 of Article 338 of the Constitution of India as to whether the National Commission for Scheduled Castes & Scheduled Tribes under these constitutional provisions is entitled to enquire into the specific individual complaints with regard to the genuineness or otherwise of Caste Certificate issued to the particular individual i.e. the petitioner. So far, this point has not been decided by any of the High Court or by the Hon'ble Apex Court. Therefore, these provisions of Article 338 of the Constitution of India have not been interpreted by any Court in this regard.
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> The issue involved is of a great public importance and therefore, I am of the considered opinion that this matter requires an authoritative decision on the point by a Larger Bench of this Court.
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> The Registry is directed to place the matter before Hon'ble the Chief Justice for consideration of constitution of a Larger Bench, whether Divis on Bench or Full Bench."

Accordingly, the Hon'ble Chief Justice placed this writ petition for hearing before the Division Bench.

(9) Respondents 1 and 2 opposing the writ petition filed their counter-affidavit dated 30-11-2001 justifying the impugned proceedings and the report. Respondents 3 and 4, namely, the State Govt. of Chhattisgarh and the Principal Secretary/Secretary SC. ST. OBC & Minorities Welfare Deptt., Govt. of Chhattisgarh jointly filed reply dated 05-03-2002 supported by an affidavit sworn to by Shri Arun Kumar Dwivedi, Deputy Secretary, Govt. of Chhattisgarh, SC/ST, OBC & Ministry Welfare Department as the Officer-in-Charge of the case. The Collector Bilaspur District, the fifth respondent also filed a separate reply dated 18-03-2002. The sixth respondent also filed his return dated 31-03-2003. Recently, respondents 3 and 4 have jointly filed an additional return dated 14-03-2006 supported by an affidavit sworn to by one Shri A. Minj, Additional Secretary, Department of Tribal Welfare. The petitioner has filed his rejoinder to the counter-affidavit of respondents 1 and 2. When this writ petition was heard both by the learned Single Bench and later by the Division Bench, respondents 1 and 2 were repeatedly directed to produce the records of the proceedings, as could be seen from the order-sheets of the case, but, for the reasons best known to respondents 1 and 2 records of the impugned proceedings were not produced before the Court for perusal. Consequently, several allegations made by the petitioner with regard to the procedure followed by the first respondent-Commission in conducting the enquiry could not be verified and tested with reference to the original records.

(10) After this writ petition was placed before the Division Bench for hearing, as directed by Hon'ble the Chief Justice, the case had

undergone number of adjournments at the request of one or the other parties to the writ petition. Ultimately, the writ petition was heard on 15-11-2006 in part and further arguments were heard on 28-11-2006 and after conclusion of the hearing, judgment was reserved on 28-11-2006. After the writ petition was heard in part on 15-11-2006, it appears, on 27-11-2006, learned counsel for the sixth respondent filed I.A. No.11230 of 2006 which runs to typed 31 pages for a direction to the Central Bureau of Investigation to seize the entire records from the State Government pertaining to issuance of alleged caste certificates in the name of the petitioner at different points of time and also record of enquiry conducted by the National Commission for Scheduled Castes and Scheduled Tribes and to direct CBI to conduct an enquiry with regard to the issuance of caste certificates to the petitioner at different points of time and use of such caste certificates by him at various places. On behalf of the fifth respondent-Collector, learned Govt. Advocate also filed an application being I.A. No.11281 of 2006 on 27-11-2006 for taking affidavit of the fifth respondent on record enclosing certain documents, marked as **Annexure-R/1 to Annexure-R/11**. There is no need for the Court to refer to or consider the application filed by the fifth and sixth respondents at a very belated stage of hearing, particularly, in the light of the view we take in the instant case. There is no need for this Court to decide the social or caste status of the petitioner in the present proceedings nor this Court can undertake adjudication of such issue in a summary proceeding under Article 226 of the Constitution of India. We are referring to the applications filed by the fifth and sixth respondent just one day prior to the conclusion of the hearing, that too in the Registry, only for the purpose of completing narration of facts of the case.

(11) We heard M/s. Vivek Tankha and Manindra Shrivastava, learned senior counsel for the petitioner, Shri Jog Singh learned standing counsel for respondents 1 and 2, Shri Ravi Shankar Prasad learned senior counsel with Shri Ravish Agrawal learned Advocate General for respondents 3 to 5, Shri Rohit Arya learned senior counsel for respondent No.6 and Shri H.N. Vyas learned counsel for the interveners.

(12) Learned senior counsel for the petitioners would assail the validity of the impugned proceedings and the report by contending that (i) the first respondent-Commission has no jurisdiction under Article 338(5) of the Constitution of India to entertain the complaint of the sixth respondent and, therefore, the impugned report is *ex facie* the one without jurisdiction; (ii) that the complaint of the sixth respondent ought to have been rejected in *limine* even otherwise, because, he sought to collaterally impugn the election of the petitioner from Marwahi Vidhan Sabha Constituency and the first respondent-Commission by entertaining the complaint of the sixth respondent has usurped the jurisdiction of the Returning Officer and the High Court and other Constitutional authorities like the Election Commission of India; (iii) that the first respondent-Commission ought to have seen that the complaint of the sixth respondent was politically motivated and by filing such complaint, he wanted to unsettle the settled matter with regard to the social and caste status of the petitioner; (iv) that the impugned report cannot be said to be the report of the first respondent-Commission, because, the report is signed only by the Chairman and not by Vice-Chairman and other Members of the Commission; (v) that the Commission ought not to have entertained the complaint of the sixth respondent in view of the judgments (**Annexure-P/1**) of the Madhya Pradesh High Court dated 24-07-1989 in Writ Petition

No.1417 of 1988 and **Annexure-P/2** dated 27-04-2001 in Writ Petition No.1039 of 2001 and (vi) that the impugned report was prepared and the findings are recorded adverse to the petitioner behind the back of the petitioner in utter violation of the principle of natural justice and fair play in action. It was also contended by the learned counsel for the petitioner that after the judgment of the Supreme Court in **Kumari Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development and others**[1] the procedure envisaged in para 13 of the said judgment has to be gone through by the Committee and the first respondent-Commission utterly lacks jurisdiction to entertain the complaint of the sixth respondent. It was also contended by the senior counsel for the petitioner that by no stretch of interpretation and reasoning, the first respondent-Commission could claim to have jurisdiction to enquire into the caste or tribal status of an individual like the petitioner under the constitutional scheme and provisions as are contained in Article 338(5) of the Constitution. The learned senior counsel for the petitioner would highlight on limited scope of power of the first respondent-Commission and the applicability of the provisions of the Code of Civil Procedure in investigating or conducting enquiry under sub-clauses (a) and (b) of Clause (5) of Article 338.

(13) Shri Jog Singh learned standing counsel for respondents 1 and 2 departing from the stand taken by the Commission in the return of respondents 1 and 2, would submit that though the Commission cannot decide caste status of an individual like the petitioner, it is open for the Commission to entertain a complaint with regard to the caste status of an individual person and to see whether the caste certificate issued to such individual is legally valid, and if it finds that the cast certificate issued to an

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1. (1994) 6 SCC 241

individual is not legally valid, the Commission can direct the State authorities or the Committee envisaged in para 13 of the judgment in the case of **Kumari Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development and others** (Supra[1]) to conduct an enquiry and decide on the actual caste and social status of such individual after holding necessary enquiry. Shri Jog Singh would submit that several observations made by the Commission in the impugned report are not findings as such with regard to the social/caste status of the petitioner, but, those observations are made on *prima facie* satisfaction of the Commission in the light of the materials laid before it. Shri Jog Singh would justify non-production of relevant records directed to be produced by the Court on the ground that since the Commission has not decided finally the caste status of the petitioner, there is no need for the Commission to produce the records before this Court, because, this Court is not called upon to pronounce upon the caste status of the petitioner, and that when the concerned State authority or the Scrutiny Committee proceeds to conduct the enquiry to determine the actual caste status of the petitioner, the Commission would produce the records. Shri Jog Singh would deny that the complaint of the petitioner is politically motivated. Shri Jog Singh would contend that though the Commission gave an opportunity to the petitioner to defend himself by issuing notice, he did not avail of the opportunity and therefore it could not be said that the impugned report was made in violation of the principles of natural justice and fair play in action.

(14) Shri Ravi Shankar Prasad learned senior counsel who appeared for respondents 3 and 4 along with Shri Ravish Agrawal learned Advocate General for the State of Chhattisgarh, having referred to the

provisions of Articles 15(4), 16(4), 16(4A), 16(4B), 330, 332, 341 and 342 and other relevant Articles of the Constitution, would contend that the protective discrimination provided in the Constitution should really reach the really backward segments of the society like Scheduled Castes, Scheduled Tribes and other backward classes, and a person like the petitioner who does not belong to the Scheduled Tribe cannot be allowed to claim the status of a Scheduled Tribe and enjoy the benefits conferred by the Constitution on the Scheduled Tribes. Shri Ravi Shankar Prasad would submit that the Commission for Scheduled Castes and the Commission for Scheduled Tribes constituted under Article 338 and Article 338-A of the Constitution of India are charged with a constitutional duty to see that the benefits provided for the Scheduled Castes and Scheduled Tribes should reach only those belonging to Scheduled Castes and Scheduled Tribes, as the case may be, and those benefits and advantages should not be knocked away by unscrupulous persons not belonging to those groups. Shri Ravi Shankar Prasad would contend that the Commission in discharging the above onerous duty should be allowed to have all incidental and residuary powers to decide even the caste or social status of an individual like the petitioner and if such a power is not conceded to the Commission, the object behind creating these Commissions would be frustrated. Shri Ravi Shankar Prasad would submit that while interpreting the constitutional provisions a different yardstick/principle has to be applied and the rules of interpretation of ordinary statute cannot blindly be followed. In support of the above submission, Shri Ravi Shankar Prasad would cite the judgments of the Supreme Court in **State of Karnataka Vs. Union of India and another[2],**

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2. **AIR 1979 SC 68**

M/s. Goodyer India Ltd. Vs. State of Haryana and others[3] **and Gujrat Assembly Election Matter**[4]. Shri Ravi Shankar Prasad would maintain that the Commission has full-fledged power to decide each and every issue arising out of caste or social status of any person and, therefore, the findings recorded by the Commission that the petitioner does not belong to Scheduled Tribe could not be condemned as the one without jurisdiction. Alternatively, Shri Ravi Shankar Prasad would contend that even assuming that the Commission lacks the jurisdiction to decide the caste status of an individual like the petitioner in exercise of its power under Article 338(5) of the Constitution itself, even then, the power of the Commission to refer the matter to the concerned State authorities or the Committee referred to in para 13 of the judgment in the case of **Kumari Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development and others** (Supra[1]) to find out the actual caste of the petitioner after conducting an enquiry could not be doubted. Meeting the contention of the petitioner that the impugned findings are recorded without giving him any opportunity and without disclosing the materials collected behind his back, Shri Ravi Shankar Prasad would submit that though an opportunity was given by the Commission by issuing a notice to the petitioner, he did not avail of the opportunity and on the other hand, he raised untenable ground of want of jurisdiction and did not participate in the enquiry and therefore, now, it should not lie in his mouth to contend that the impugned report was made in violation of the principles of natural justice and fair play in action. Shri Ravi Shankar Prasad would contend that though before this Court voluminous materials are placed by the respondents to show that the

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3. **AIR 1990 SC 781**
4. **(2002) 8 SCC 237**

petitioner does not belong to Scheduled Tribe, the petitioner has failed to produce any rebuttal evidence to prove his case that he actually belongs to Scheduled Tribe. Shri Ravi Shankar Prasad by citing the judgment of the Apex Court in **Director of Tribal Welfare, Govt. of A.P. Vs. Laveti Giri and another**[5] would submit that it is the burden of the petitioner to prove his social status and that he has utterly failed to discharge that burden before this Court and therefore the writ petition is liable to be dismissed in *limine*. Shri Ravi Shankar Prasad would also contend that simply because the petitioner has been claiming the social status of a Scheduled Tribe for a long period, that is to say, from the year 1967 and onwards and contested the election on earlier occasions on the basis that he belongs to Scheduled Tribe, that fact itself would not operate as an estoppel for the respondents authorities or the Commission now to test the social status claimed by the petitioner and in that regard he would cite the judgment of the Supreme Court in **State of T.N. and others Vs. A. Guruswamy**[6].

(15) The arguments advanced by Shri Rohit Arya learned senior counsel for the sixth respondent are also on the same lines as advanced by Shri Ravi Shankar Prasad. In addition, Shri Rohit Arya would highlight that all the caste certificates obtained by the petitioner from time to time are essentially based on the caste certificate secured by him fraudulently in the year 1967 from the Naib Tahsildar, Pendra Road. Shri Rohit Arya would contend that except the caste certificate obtained by the petitioner in the year 1967, he has utterly failed to produce any evidence, documentary or otherwise, to substantiate his claim that he belongs to Scheduled Tribe and, on the other hand, the documents produced by

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5. (1995) 4 SCC 32
6. (1997) 3 SCC 542

respondents 3, 4 and 5 as well as respondent No.6 and the interveners would go to show that the petitioner does not belong to Scheduled Tribe. Shri H.N. Vyas learned counsel for the interveners would make submissions on the same lines as has been done by the learned senior counsel for respondents 3 to 5 and 6.

(16) Shri Manindra Shrivastava learned senior counsel for the petitioner by way of reply would highlight on the well established principle that the judicial review is directed against the decision-making process and not the decision as such. He would submit that the impugned proceeding and the report and the findings recorded therein are liable to be set at naught on the ground of lack of jurisdiction and procedural impropriety in decision-making. He would also highlight on the highly dubious stand now taken by the State authorities in the additional statement of respondents 3 and 4 dated 14-03-2006 which is in total variance and contradictory to their own earlier return dated 05-03-2002. Shri Manindra Shrivastava would, therefore, contend that the complaint of the sixth respondent is politically motivated and since the B.J.P. is in power presently, the Government has come forward with additional statement to support the sixth respondent and to harass a prominent, formidable political opponent like the petitioner.

(17) Having heard learned counsel for the parties on 15-11-2006 and 28-11-2006 quite extensively, the following two main points arise for our decision:

(1) Whether the first respondent-Commission lacks jurisdiction/power to entertain the complaint of the sixth respondent questioning the claim of the petitioner that he belongs to Scheduled Tribe ?

(2) Whether the impugned proceedings, report and the findings recorded therein are vitiated on account of infraction of principles of natural justice and fair play in action ?

(18) **Point No.1:** Although Shri Jog Singh in the course of his submission did not claim that the Commission has the jurisdiction/power to pronounce upon the caste/social status of the petitioner in exercise of the power conferred upon it under the provisions of Article 338 (5) (a)(b) of the Constitution of India and submitted that the findings of the Commission in the impugned report with regard to the caste status of the petitioner are not findings as such, but, they only reflect *prima facie* satisfaction of the Commission to refer the matter to the State authorities to conduct enquiry and decide on the caste claim of the petitioner, since M/s. Ravi Shankar Prasad, Rohit Arya and H.N. Vyas appearing for the other respondents and the interveners have argued that the Commission has the power to entertain the complaint of the sixth respondent and pronounce upon the caste status of the petitioner, it becomes necessary for us to examine whether Article 338 of the Constitution of India grants power to the Commission to determine the caste status of an individual like the petitioner. The precise argument of the learned counsel for the respondents 3 to 5 and 6 and the interveners is that the provisions of Article 338 (5)(a)(b) read with the provisions of Clause (8) thereof confer power on the Commission to investigate into the caste status of an individual also and record its findings.

(19) Article 338 of the Constitution reads as follows:

> **338. [National Commission for Scheduled Castes and Scheduled Tribes]-** [(1) There shall be a Commission for the Scheduled Castes to be known as the National Commission for the Scheduled Castes

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine.]

(3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

(4) The Commission shall have the power to regulate its own procedure.

(5) It shall be the duty of the Commission-

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes

(c) to participate and advise on the planning process of socio-economic development of the Scheduled Castes and to evaluate the progress of their development under the union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

(6) The President shall cause alls such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendation relating to the Union and reasons for the non-acceptance, if any, of any of such recommendations.

(7) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any such recommendations.

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) of inquiring into any complaint referred to sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters namely:-

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court of office;

(e) issuing commissions for the examination of witnesses and documents;

(f) any other matter which the President may, by rule, determine.

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes.]

Article 338 was substituted by the Constitution (65th Amendment) Act, 1990. Prior to the substitution of this Article, Article 338 provided for a Special Officer for the Scheduled Castes and Scheduled Tribes to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution and to

report to the President on their working. It was felt that a high level five-member Commission under Article 338 will be a more effective arrangement in respect of the constitutional safeguards for Scheduled castes and Scheduled Tribes than a single Special Officer. It was felt necessary to elaborate the functions of the said Commission so as to cover measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes and Scheduled Tribes and to entrust to the Commission such other functions in relation to the protection, welfare, development and advancement of the Scheduled Castes and Scheduled Tribes as the President may, subject to any law made by Parliament, by rule specify. It was also felt that the reports of the said Commission shall be laid before Parliament and the Legislatures of the States.

(20) We do not think that the provisions of Article 338 (5)(a)(b) of the Constitution would come to the aid of the Commission to claim that it has jurisdiction to decide caste/social status of an individual like the petitioner. By no stretch of imagination, even liberally interpreting as suggested by Shri Ravi Shankar Prasad, the Commission could claim to have jurisdiction to enquire into the caste or tribal status of an individual like the petitioner. The Commission cannot claim aid of the provisions of Article 338 (5)(a)(b) for arrogating to itself the jurisdiction to make enquiry into the truthfulness or otherwise of an individual's caste or social status. Having regard to the language employed in the provisions of Article 338 (5) of the Constitution, the power of investigation into the complaints with regard to the deprivation of safeguards, by necessary implications, only means deprivation of safeguards *vis-a-vis* the State which has to

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guarantee the safeguards under various provisions of the Constitution and other related laws. Thus, the Commission can at the most investigate into the complaints pertaining to deprivation of the safeguards in relation to the State and not an individual like the petitioner. The provisions contained in Article 338 (6) and (7) clearly spell out in unequivocal terms the aforesaid intendment of the Constitution.

(21) Although Shri Jog Singh learned standing counsel for the Commission would claim that the Commission has not recorded any finding with regard to the social and caste status of the petitioner in the impugned report and it has only recorded its *prima facie* satisfaction with reference to the allegations made by the sixth respondent in his complaint, that submission is not acceptable to us for more than one reason. Firstly, in para 26 of the impugned report, the Commission in an unmistakable terms has stated that taking into consideration the available evidence on record it is of the considered view that the petitioner has been fraudulently claiming to belong to 'Kanwar' community for the purpose of getting ST certificate although he and his ancestors belong to Satnami caste, which is included in the SC list of the State. As if that is not enough, even the Commission, in internal pages 6 and 7 of its counter-affidavit, in more than one place, has stated that the Commission after holding enquiry and considering the objections of the petitioner has recorded its finding that the petitioner does not belong to ST community. Therefore, we hold that the impugned report and the findings recorded by the Commission therein with regard to the social status of the petitioner are without jurisdiction.

(22) In the course of the argument, it was contended that since certain trappings of a civil Court trying a suit are made applicable to the Commission while investigating any matter referred to in sub-clause (a) or

enquire into any complaint referred to in sub-clause (b) of Clause (5) of Article 338 of the Constitution as specified under sub-clause (8) of that Article, the Commission has the power to pronounce upon the caste status of an individual like the petitioner also. The above contention has no merit. The judgment of the Supreme Court in the case of **All India Indian Overseas Bank SC and ST Employees' Welfare Association and others Vs. Union of India and others**[7] is a complete answer to negative the above contention. In that case, the question that arose for consideration was whether the Commission has the power to issue a direction in the nature of an interim injunction. The appellant therein pressed into service Clauses (5) and (8) of Article 338 of the Constitution to contend that the Commission has power to issue a direction in the nature of an interim injunction. While negating the above contention the Supreme Court has held that all the procedural powers of a civil Court given to the Commission by Article 338 (8) of the Constitution are for the limited purpose of investigating any matter under Article 338 (5)(a) or inquiring into any complaint under Article 338 (5) (b). The Supreme Court held that the powers of a civil Court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading of Clause (8) of Article 338 of the Constitution. Therefore, the Supreme Court opined that the Commission having not been specifically granted any power to issue interim injunctions, lacks the authority to issue an order of the type issued in that case. The above position assumes relevance to answer the alternative contention of Shri Ravi Shankar Prasad that the Commission has atleast a power to refer to the State authorities or the Scrutiny Committee referred

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7. (1996) 6 SCC 606

to in para 13 of the judgment in the case of **Kumari Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development and others** (supra[1]) to investigate into the caste status claimed by the petitioner and record its finding.

(23) In our considered opinion, the direction issued by the Commission to the State Governments in the impugned report to conduct verification of the genuineness of the Scheduled Tribe certificate issued to the petitioner and to initiate necessary action for cancellation of the Scheduled Tribe certificate and also criminal action as provided in the law and in the rules, is without authority and jurisdiction, particularly, in view of the provisions contained in Clause (7) of Article 338 of the Constitution of India. The Commission, which owes its existence, functions and powers to the Constitution, has not been conferred with any power or authority to issue directions of mandatory in nature to any authority of the State Government save and except for the limited purpose of facilitating an enquiry or investigation with the aid of certain powers of civil Court as per Article 338 (8) of the Constitution. A report as envisaged under Article 338 (5) of the Constitution would be sent by the Commission only in accordance with Article 338(6) and Article 338(7) of the Constitution, and in case where such report pertains to the measures requires to be implemented by the State Government, to the Governor of the State, who shall cause the same to be laid before the Legislature of the State with recommendations of the State Government, if any. Admittedly, no such procedure has been followed by the Commission in the instant case.

(24) Looking from another angle also, the power to decide caste or social status of an individual cannot be conceded to the Commission constituted under Article 338 and Article 338-A of the Constitution. The

direction issued by the Hon'ble Supreme Court in para 13 of the judgment in the case of **Kumari Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development and others** (supra[1]) is a code in itself governing the whole procedure for the issuance of social status certificate, their scrutiny, their approval and withdrawal of such certificates. The Supreme Court having noticed several instances where ineligible persons not belonging to Scheduled Caste or Scheduled Tribes or OBC have falsely secured social status certificates and on the basis of such certificates secured discriminatory treatments provided under the various provisions of the Constitution at the peril of the targeted groups and then resorting to dilatory tactics in prolonging resolution of the issues relating to their social status for years, directed thus:

> "It is, therefore, necessary that the certificates issued are scrutinized at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following:
>
> 1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.
>
> 2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.
>
> 3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.
>
> 4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint

Secretary or any officer higher in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "nor genuine" or 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgment due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on

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receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-à-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalizing the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the principle or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post."

(25) The directions 11, 12 and 13 contained in paragraphs 13 of the judgment are important and relevant for our purpose. They make it very clear that only the Committee can go into the caste/social status of an individual and its opinion is final and conclusive, however, subject to judicial review under Article 226 of the Constitution. Direction 12 enacts a prohibition that no suit or other proceedings before any other authority should lie. We are at a loss to understand how the first respondent-

Commission which is bound by the judgment of the Supreme Court in the case of **Kumari Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development and others** (supra[1]) could usurp the power of the Committee and entertain the complaint of the sixth respondent in flagrant violation of the prohibition contained in direction No.12. It is not the argument of any learned counsel that the first respondent-Commission is not bound by the prohibition contained in direction No.12 of the Supreme Court. Looking from that angle also, the impugned proceeding/report of the Commission is a nullity in the eye of law. None of the observations or condition in para 13 of the judgment in **Kumari Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development and others** (supra[1]) would even remotely indicate that the first respondent-Commission has the power to direct the Committee to go into the question to conduct enquiry into the social status of the petitioner after the Commission itself recording its satisfaction or finding that the petitioner does not belong to Scheduled Tribe. In view of the finding recorded by the first respondent-Commission itself that the petitioner does not belong to Scheduled Tribe and he has been fraudulently claiming the status of Scheduled Tribe, any enquiry by the Committee would be a futile exercise. The Committee is not expected to record a finding which is different from the finding recorded by the Commission. Be that as it may, the finding recorded by the Commission would undeniably influence the mind of the Committee in the decision-making.

(26) Although in the light of the judgment of the Supreme Court in the case of **Kumari Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development and others** (supra[1]), the Commission ought not to have entertained the complaint of the sixth respondent and recorded the finding on the allegation made by the sixth

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respondent, the Commission referred the complaint of the sixth respondent to the High Power Committee constituted by the Government of Chhattisgarh State in pursuance of the directions of the Supreme Court in **Kumari Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development and others** (suspra[1]) and the said Committee, on facts and merit examined the complaint, the jurisdiction and function of the said Committee could not have been usurped by the Commission under the garb that the Committee allegedly observed that the complaint does not fall within the purview of the power of the Committee. The Commission in its report as well as in the counter-affidavit has tried to read this part of the report of the Committee completely ignoring the context in which that observation was made by the Committee. It is quite clear that what the Committee really intended to convey by the aforementioned observation was that the grievance of the sixth respondent against the petitioner that he contested the election on the basis of a false Scheduled Tribe certificate, pertains to election dispute and that issue can be decided only by the competent authorities under the Representation of Peoples Act and the High Court and the Supreme Court in an election petition and or an appeal, as the case may be, and the same was outside the purview of the power and functions of the Committee. The above view taken by the Committee is unexceptionable.

(27) On page 10 of the counter-affidavit of the Commission reference has been made to the successful election of the petitioner from Marwahi Assembly Constituency in the year 2001, which has been reserved for Scheduled Tribe candidate and what is stated on that page would reveal what weighed with the Commission to entertain the complaint of the sixth respondent resulting in the impugned report. It is

trite to state that in doing so, the Commission has sought to collaterally deal with the issue of the election of the petitioner under the garb of examining the complaint with regard to the deprivation of the right of a genuine Scheduled Tribe candidate from being elected to the Vidhan Sabha. If anybody wanted to challenge the election of the petitioner to Vidhan Sabha from Marwahi Assembly Constituency in the year 2001 on the ground that he does not belong to Scheduled Tribe, his election could have been assailed by way of an election petition before the High Court. In the instant case, admittedly, after the period for filing the election petition the Commission entertained the complaint of the sixth respondent and did something indirectly which could not be done directly. Such an action of the Commission clearly falls foul of Article 329 of the Constitution which contains the constitutional bar. Clause (b) of Article 329 excludes the jurisdiction of the Courts and the authorities to entertain any matter relating to 'election' which can be questioned only by an election petition under the law prescribed by the appropriate Legislature (Cf. Chaps. II-III of the Representation of the People Act, 1951).

(28) In the course of the argument, Shri Jog Singh learned standing counsel for the first respondent-Commission submitted that the Commission has received hundreds of complaints with regard to the caste and social status of individuals also and the Commission has been entertaining such complaints and, therefore, it could not be said that the Commission lacks jurisdiction to entertain complaints against the social and caste status of individuals. It is a very strange submission. Jurisdiction is a question of power, a pure question of law. A wrong practice and/or usurping a jurisdiction wrongly by an authority would not invest in such authority a power to exercise such jurisdiction. The

Commission has stated in the impugned report that it has been '**selectively**' taking up the complaints regarding the caste and social status of the individuals for enquiry. If it is the case of the Commission that it has the jurisdiction to entertain complaints even against social and caste status of individuals, why should Commission selectively entertain or take up complaints received by it for enquiry and investigation, as if it has the sweet discretion or privilege either to entertain or not to entertain a complaint and then either to enquire into or not enquire into such complaint. We have every reason to state that such a power is totally absent in the Commission. It is needless to state that Articles 338 and 338-A of the Constitution of India do not grant any such power to the Commission. The Commission being a creature of the Constitution conferred with only certain specified powers is expected to function within the parameters of the powers granted to it and it cannot assume jurisdiction which does not belong to it or exceed a jurisdiction granted to it.

(29) From the pleadings of respondents 3 and 4, we find that the State Government is guilty of approbating and reprobating in their stand for the reasons best known to them. In the reply of respondents 3 and 4 dated 05-03-2002, respondents 3 and 4 have virtually supported the case of the petitioner and the view taken by the High Power Committee. The view of the High Powered Committee was sought to be supported by respondents 3 and 4 by referring to the instructions of the State Government of Madhya Pradesh contained in Circular dated 01-08-1996 defining the limits of the powers of the High Powered Committee. In para 6 of the return, it was further contended by respondents 3 and 4 that if at all the Commission has the power to record the finding with regard to the social status of the petitioner under Article 338(5) of the Constitution, the

Commission ought to have forwarded the impugned report to the Governor in compliance with the provisions of Clause (7) of Article 338 and the same was not done by the Commission.

(30) The collector, Bilaspur District, in his reply dated 18-03-2002 has denied all the allegations made by the sixth respondent in his complaint. In the reply, it is stated thus:

> "1. In the year 1967, Pendra was Sub-Tehsil and a Naib Tehsildar was posted. From the records, it is revealsed that Shri P. Tirkey was oposted as Naib Tehsildar from January, 2967 to June, 1970 and from August, 1980 to August, 1986. However, the cases regarding issuance of certificate are registered as Revenue Case under the head B-121 and the records of the same are kept only for a period of three years. Shri P. Tirkey, the then Naib Tehsildar, now retired, has affirmed on affidavit dated 6.3.2002 furnished to the Collector, Bilaspur, issuance of the certificates da5ed 6.6.1967 and dated 6.3.1986 to the petitioner regarding his tribal status. It is not factually correct that the certificate in the year 1967 was issued by the Additional Tehsildar but it was issued by the Naib Tehsildar and the same is borne out from the certificate. It is further submitted that the Government orders in force at the time i.e. in 1967 authorised the Naib Tehsildar to issue Caste/Tribe certificate.
>
> 2. Pendra, however, became a full fledged Tehsil and functional with effect from 15.8.1981.
>
> 3. In so far as, reference to an application alleged to have been made by the petitioner in the year 1977 to Additional Tehsildar, Pendra for grant of Scheduled Tribe certificate and the same resulting in cancellation of the application by order dated 08.4.1977 is concerned, it is submitted that the same is not borne out from the available records. The proceedings of the so called case which appears to be registered as case no.49 as per Annexure-VII at page 74-75 (typed copy page 72-73) filed alongwith counter affidavit of respondent No.1 and No.2 and which purports to be a photocopy of certified copy proceedings dated 04.4.1977 and 08.4.1977, is not available on record. From Annexure-VII referred to above, it appears to be proceedings

drawn in case No.49 and the rest of the details are neither legible from the photocopy nor available. On verification from the original case register maintained in the office of the Tehsildar of Pendra Road case No.49 does not pertain to issuance of caste/social status certificate much less concerning the petitioner. On the other hand, case No.49/B-121 dated 10.3.1977 relates to applicant Mayaram, S/o Maniram of village Nevasa, Patwari Halka No.24.

4. With regard to the petitioner's application dated 30.12.2000 submitted through his Advocate to the Additional Collector, Bilaspur for issuance of Scheduled Tribe certificate "Kanwar", it is submitted that the same was made alongwith the copy of Scheduled Tribe certificate issued to the petitioner in the past dated 6.6.1967 and 6.3.1986 and there were no reasons for the Additional Collector, Bilaspur to doubt the legality and correctness thereof and as such a Scheduled Tribe certificate was issued to the petitioner on 08.1.2001 after drawing proper proceedings.

5. On enquiry it has been found that no person or officer from the office of the Commission ever contacted any office of the administration in the district head quarter at Bilaspur or in the concerned Tehsil, Pendra Road and sought any assistance. Question therefore, of not providing assistance to any such officer does not arise. As a matter of fact there is no apparent evidence available with regard to official visit to any office under the District Administration or Tehsil Pendra of any officer from the Office of the Commission for any enquiry with regard to the certificates.

6. The observations said to have been made in the report of the Director of the Commission, State Office, Bhopal as reproduced at page 30 of the counter affidavit of the Commission is wholly incorrect and baseless. Neither the Gourela Tehsil (Pendra Road) was put under tight administration and vigilance as alleged nor the petitioner had made the revenue and police administration alert vigilant as alleged to restrict any enquiry. The said allegations are far from the truth."

(31) Respondents 3 and 4 having taken a particular stand as noted above in their reply dated 05-03-2002, quite curiously, have

changed their stand, *nay,* mind as reflected in the additional return of respondents 3 and 4 recently filed. In the additional return dated 14-03-2006, respondents 3 and 4 have stated that they are duty-bound to investigate into the social status of the petitioner to protect the interest of the Scheduled Caste and Scheduled Tribes. It is further stated that in the opinion of the State Government, the High Power Scrutiny Committee constituted by the State Government has the authority and power to investigate into the matter relating to the social status of the petitioner. In para 6 of the additional return, it is stated that it is proper to enquire into the social status claim of the petitioner in depth after investigation and to take further suitable action as per law. Respondents 3 and 4 having thus opined, in para 7, sought to suggest that the petitioner does not belong to Scheduled Tribe, because as per the report of the concerned Patwari the petitioner's father, namely Shri K.P. Jogi is a Christian and his ancestors belong to Satnami caste, which is a Scheduled Caste. The Collector, Bilaspur District, the fifth respondent, however, has not filed any additional return. Therefore, whatever statements made by him in his reply dated 18-03-2002 after perusal of all the relevant original records stand, and they stand unrebutted.

(32) The return as well as the additional return of respondents 3 and 4 have been supported by affidavits sworn to by responsible officers of the State. Alas ! This is an instance which creates a serious doubt in the mind of the Court whether civil servants of the State, at least few of them like the deponents herein, have lost their commitment, rectitude and duty to the Constitution which trusted them that they will discharge the duties and functions fairly, reasonably and faithfully and in the best public interest, and they would not dance to the tune of their bosses, the political

Executive in power as pawns in the latter's hands. Quite curiously, in the additional affidavit, not a word is said specifically and explicitly to contradict the correctness of any of the statements made in the main return. If the Officers of the State are allowed to approbate and reprobate in order to appease their masters, the political Executive, the sanctity and credibility attached to the civil service of the State will be in peril and would be subjected to social ridicule and distrust thereby demoralizing the public administration. Such a thing cannot be countenanced. There is no difficulty for the Court to understand why such additional return has been filed by respondents 3 and 4 at a belated stage, just before final hearing of the writ petition began. Is it because the party in power in the State of Chhattisgarh is opposed to the party to which the petitioner belongs ? Is it a political vendetta on the part of the present Government to file such additional return? The State Government has made no attempt to clear these doubts in the mind of the Court.

(33) At this stage itself we are constrained to observe that despite repeated directions by us to learned Advocate General to place all original records relating to issuance of caste certificates to the petitioner, learned Advocate General at the time of hearing did not produce the records. In a certiorari proceeding withholding of the records from the perusal of the Court is highly objectionable and cannot be countenanced. An adverse inference has to be drawn against the conduct of the State Government in withholding the records. Similarly, the conduct of the first respondent-Commission in not producing the records on the specious ground already referred to above is also objectionable and cannot be countenanced. For the reasons stated by us above, we are of the considered opinion that what is stated in the additional affidavit of the respondents 3 and 4 dated

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14-03-2006 is an afterthought, politically motivated and is intended to take revenge against a political opponent for their own political reasons and expediency. It is quite obvious that unseen hands are operating; otherwise, there was no difficulty at all for the learned Advocate General to produce the original records before the Court for its perusal particularly because the procedural impropriety is urged by respondents 6 and interveners as a ground of attack to assail the validity of the caste certificates issued to the petitioner from time to time.

(34) We also find force in the contention of learned senior counsel for the petitioner that the impugned proceedings/report dated 16-10-2001 cannot be regarded as the report of the first respondent-Commission. The first respondent-Commission consists of Chairperson (Chairman), Vice Chairperson (Vice Chairman) and five other Members, whereas, the impugned proceeding/report is signed only by Dilip Singh Bhuriya, Chairman and it is not signed by other members. Though specific ground in that regard has been taken in the writ petition by the petitioner and despite the Court directing the standing counsel for the Commission to produce the records in order to verify whether required or all members of the Commission participated in the deliberations and whether the impugned report is signed by them all, the records are not made available. Therefore, an adverse inference has to be drawn. Since the impugned proceeding/report bears only the signature of Chairman and the specific allegation made by the petitioner is not denied nor the records are produced, we hold that the impugned proceeding/report cannot be regarded as the proceeding/report of the Commission.

(35) We also find substance in the allegation of the petitioner that the move of the sixth respondent to question the social status of the

petitioner is politically motivated. We say this, because, it is not that the petitioner clandestinely and secretly claimed the status of the Scheduled Tribe. The petitioner has been admittedly claiming that status atleast from the year 1967 and he secured ST certificate in the year 1967 and thereafterwards he contested number of elections to Parliament and State Legislature on the basis that he belongs to Scheduled Tribe. It is true that the ST status claimed by the petitioner was challenged in the year 1988 and 1989 before the Madhya Pradesh High Court in M.P. No.1417 of 1988 and W.P. No.1039 of 2001 as already referred to above and the Madhya Pradesh High Court dismissed both the writ petitions. The Madhya Pradesh High Court in W.P. No.1039 of 2001 took strong exception to question the social status of the petitioner repeatedly without reason and rhyme and despite the earlier order passed by the Court and dismissed the writ petition with exemplary cost. At this stage itself, it needs to be noticed that the writ petitions were filed before the Madhya Pradesh High Court as Public Interest Litigation and it was not an adversary litigation. In our considered opinion, the judgments of the Madhya Pradesh High Court in those writ petitions are judgments *in rem* and not judgments *in personam*. Therefore, the Commission should not have ignored those judgments on a specious ground stated by it in the report.

(36) **<u>Point No.2</u>**: The impugned report and the findings recorded therein cannot be sustained in law if not for any other reason but for the reason of utter infraction of principles of natural justice and fair play in action. Admittedly and demonstrably, the Commission having received the complaint from the sixth respondent and without first deciding the jurisdictional issue raised by the petitioner in his reply to the show cause notice proceeded to collect informations, particulars and documents from

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several sources behind the back of the petitioner as reflected in the impugned report itself and recorded an adverse finding against the petitioner without disclosing those adverse materials collected by it to the petitioner. The finding recorded by the Commission in the impugned report and the direction issued by it to the respondents, Chhattisgarh State authorities, it is trite, impinge upon the civil rights of the petitioner. 'Affected should be appraised' is a constitutional creed flowing from Article 14 of the Constitution of India and unless the affected is appraised there is no compliance of principles of natural justice and fair play in action. Law on natural justice is so well settled from a series of decisions of the Apex Court and High Courts that it leaves one bewildered at times, that a Constitutional Commission like the respondent-Commission constituted under Article 338 of the Constitution consisting of Chairperson, Vice Chairperson and five others commit such basic and fundamental procedural error that the Court is left with no option except to set aside the impugned proceeding/report. A decision-making authority is duty-bound to disclose any and every adverse material collected by it before using them against a person, to such person before an adverse decision is taken, and if it is not done the order made by such authority will be vitiated only on that count. Therefore, we hold that the impugned proceedings, report and the findings are vitiated on account of infraction of principles of natural justice and fair play in action.

(37) Before parting with this case, we are constrained to place on record that how a politically motivated petition filed by the sixth respondent before the Commission has resulted in enormous prejudice to the public interest apart from causing prejudice to the petitioner. Since the records are not placed before us by the Commission, we are not in a position to

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know that how many sittings of the Commission consisting of Chairperson, Vice-Chairperson and five-Members were conducted, the time spent by the Commission and other public authorities, the cost incurred out of the State Exchequer etc. But, the order-sheet maintained in this writ petition would vividly tell us how the proceedings went on in this Court. This writ petition was listed before the Court for hearing on as many as thirty occasions. On behalf of the Commission Shri Jog Singh, a senior standing central Govt. counsel came all the way from Delhi on almost all dates of hearing with his colleagues to conduct the case. On behalf of the State of Chhattisgarh and its authorities all through learned successive Advocate Generals with Additional Advocate General and a battery of other Government Advocates appeared on all the dates of hearing. On certain dates of hearing, learned Additional Solicitor General of India also appeared along with the senior standing counsel for the Commission. At the time of final hearing, Shri Ravi Shankar Prasad learned Senior Advocate practising in the Supreme Court appeared for the State of Chhattisgarh and its authorities along with the learned Advocate General of Chhattisgarh State, Smt. Suparana Shrivastava, Mr. Sumesh Bajaj. The enthusiasm, commitment and seriousness shown by the State Government in this case is undeniably extraordinary as well as startling. Before the Commission and this Court what is assailed is the action of the State Government in issuing the alleged false social status certificate to the petitioner, but, quite curiously, the State Government did everything at its command, more than what the sixth respondent or the Commission did, to question the social status claimed by the petitioner; in other words, to question its own action. As if that is not enough, as noticed above, three Ministers and an MLA have filed applications in this writ petition to intervene. Although this Court by order dated 31-07-2002 permitted them

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to address the Court only 'on any question of law, which may arise for determination in the writ petition', on behalf of the interveners, learned counsel appearing for them, in the course of submissions, addressed the arguments only on facts and nothing else as if he was prosecuting a case before a fact-finding authority. There is no difficulty for us to understand why these interveners belonging to a political party have taken this unusual extraordinary move against a political opponent. Is it because the petitioner is a political opponent to the party in power ? Does it not amount to political vendetta ? The facts speak for themselves, and they answer the questions. We are quite sure that the State of Chhattisgarh as well as the Commission must have spent considerable sum of money in prosecuting the writ petition and attending to the proceedings before the Commission. Since we are satisfied that the complaint made by the sixth respondent several decades after the petitioner claimed social status of Scheduled Tribe in the year 1967 and contested several elections was an outcome of a deliberate political move to harass the petitioner and since it has resulted in considerable injury to the public interest in the sense that the meager financial resources of the State have been diverted in prosecuting this case at the peril of the peoples' interest, we think that the sixth respondent who is instrumental for this litigation should be made accountable; otherwise, public interest would suffer.

(38) In the result and for the foregoing reasons, we allow this writ petition and quash the entire proceedings of the Commission registered in file No.2/FCS 2/2001-SSW-I and the "findings" contained in the report dated 16-10-2001 impugned in this writ petition and declare the same void and inoperative. The sixth respondent is directed to pay a sum of

Rs.10,000/- (Rupees Ten Thousand) towards the cost to the petitioner within two weeks from today.

(39) The State of Chhattisgarh and the Commission are directed to file memo of calculations in this case in the office within two weeks from today giving the full details of the actual costs incurred by them in prosecuting this writ petition after serving copies of the same on the learned counsel for the sixth respondent. The sixth respondent is directed to pay the cost incurred by the State of Chhattisgarh and the Commission to them within a period of one month from the date of receipt of memos of calculation.

Sd/-
Chief Justice

Sd/-
V.K. Shrivatava
Judge

Brajesh*

-Sd-